



House of Representatives

General Assembly

File No. 257

January Session, 2017

Substitute House Bill No. 6335

House of Representatives, March 28, 2017

The Committee on Environment reported through REP. DEMICCO of the 21st Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT PROHIBITING THE SALE AND TRADE OF IVORY AND RHINOCEROS HORN IN CONNECTICUT.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective July 1, 2018*) (a) For the purposes of this
2 section:

3 (1) "Bona fide educational or scientific institution" means an
4 institution that establishes through documentation either of the
5 following: (A) An educational or scientific tax exemption, from the
6 federal Internal Revenue Service or such institution's national or state
7 tax authority; or (B) accreditation as an educational or scientific
8 institution, from a qualified national or state authority for the
9 institution's location;

10 (2) "Ivory" means a tooth or tusk from a species of elephant,
11 hippopotamus, walrus, whale, or narwhal, or a piece thereof, including
12 any product that contains or that is advertised as containing ivory;

13 (3) "Rhinoceros horn" means the horn or a piece or derivative
14 thereof, such as powder, of a species of rhinoceros, including any
15 product containing or advertised as containing rhinoceros horn;

16 (4) "Sale" or "sell" means selling, trading, bartering for monetary or
17 nonmonetary consideration, or giving away in conjunction with a
18 commercial transaction; and

19 (5) "Total value" means either the fair market value or the actual
20 price paid for ivory or rhinoceros horn, whichever is greater.

21 (b) Except as provided in subsections (c) and (d) of this section, no
22 person shall purchase, sell, offer for sale or possess with the intent to
23 sell any ivory or rhinoceros horn.

24 (c) The prohibitions in subsection (b) of this section shall not apply
25 to any of the following:

26 (1) Any employee or agent of the federal or state government
27 undertaking a law enforcement activity pursuant to federal or state
28 law or a mandatory duty required by federal law;

29 (2) Any activity expressly authorized by federal law;

30 (3) Ivory that is part of an antique, provided:

31 (A) Such ivory was removed from the wild prior to February 26,
32 1976, if such ivory is elephant ivory;

33 (B) Such ivory is a fixed component of a larger manufactured item
34 and is not, in its current form, the primary source of the total value for
35 such item;

36 (C) The total volume of the ivory component is less than twenty per
37 cent;

38 (D) The manufactured item is not made wholly or primarily of
39 ivory;

40 (E) The ivory is not raw, unaltered or minimally changed by
41 carving; and

42 (F) The owner or seller provides historical documentation or a
43 sworn affidavit executed by an expert demonstrating provenance that
44 verifies that the antique is not less than one hundred years old;

45 (4) The noncommercial transfer of ownership of ivory or rhinoceros
46 horn to a legal beneficiary of an estate, trust or other inheritance; or

47 (5) The purchase, sale, offer for sale, or possession with intent to sell
48 of an ivory or rhinoceros horn article by a bona fide educational or
49 scientific institution or a museum.

50 (d) The prohibitions in subsection (b) of this section shall not apply
51 to ivory that is part of a musical instrument that was made prior to
52 February 26, 1976.

53 (e) It shall be presumptive evidence of possession with intent to sell
54 ivory or rhinoceros horn if the ivory or rhinoceros horn is possessed in
55 a retail or wholesale outlet commonly used for the buying or selling of
56 similar items. Such presumption shall not preclude a finding of intent
57 to sell based on any other evidence that may serve to independently
58 establish such intent.

59 (f) Any person who violates any provision of this section or any
60 rule, regulation, or order adopted pursuant to this section shall be
61 guilty of a class B misdemeanor provided: (1) For the first offense,
62 such person shall be fined not less than three thousand dollars or an
63 amount equal to two times the total value of the article involved,
64 whichever is greater, or imprisoned for not more than six months, or
65 both; and (2) for a second or any subsequent violation, such person
66 shall be fined not less than six thousand dollars or an amount equal to
67 three times the total value of the article involved, whichever is greater,
68 or imprisoned not more than one year, or both.

69 (g) Upon conviction or other entry of judgment for a violation of
70 this section, any seized ivory or rhinoceros horn shall be forfeited and,

71 upon forfeiture, either be maintained by the Department of Energy and
72 Environmental Protection for educational or training purposes,
73 donated by the department to a bona fide educational or scientific
74 institution or destroyed.

75 (h) The Commissioner of Energy and Environmental Protection, in
76 consultation with the Attorney General, may adopt regulations, in
77 accordance with chapter 54 of the general statutes, to implement the
78 provisions of this section.

This act shall take effect as follows and shall amend the following sections:		
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Section 1	<i>July 1, 2018</i>	New section
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ENV *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 18 \$	FY 19 \$
Resources of the General Fund	GF - Revenue Gain	Less than 5,000	Less than 5,000

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill bans the importation, sale, purchase, and bartering of any animal ivory, rhinoceros horn or associated products, allowing for certain exemptions.

It establishes a new fine, of at least \$1,000 (or twice the value of the product) for first-time violators. It is anticipated that less than 5 violations may occur, resulting in a revenue gain of less than 5,000 annually.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to the number of violations.

OLR Bill Analysis**sHB 6335*****AN ACT PROHIBITING THE SALE AND TRADE OF IVORY AND RHINOCEROS HORN IN CONNECTICUT.*****SUMMARY**

This bill generally bans the purchase, sale, offering for sale, or possession with the intent to sell of ivory, rhinoceros horn, or products made from them. The ban includes the trading, bartering, or giving away of these items as part of a commercial transaction.

The bill exempts from the ban (1) state or federal law enforcement activity, (2) activity allowed by federal law, (3) certain antiques or musical instruments containing ivory, (4) noncommercial transfers to legal beneficiaries, and (5) activity by a bona fide educational or scientific institution or museum.

The bill makes a violation a class B misdemeanor. It requires seized ivory or horn to be forfeited and the Department of Energy and Environmental Protection (DEEP) to (1) use it for educational or training purposes, (2) donate it to a bona fide educational or scientific institution, or (3) destroy it.

Under the bill, possession of ivory, rhinoceros horn, or an associated product in a retail or wholesale outlet commonly used to buy or sell similar items is presumed to be evidence of possession with intent to sell. A finding of intent to sell may also be based on other evidence that independently establishes such intent.

The DEEP commissioner, in consultation with the attorney general, may adopt implementing regulations. Existing law requires the commissioner to adopt regulations on the trade of raw elephant ivory or products made from this ivory if he finds that it contributes to

elephant endangerment or extinction (CGS § 26-315).

EFFECTIVE DATE: July 1, 2018

SCOPE OF BAN

The ban applies to:

1. all or a piece of a tooth or tusk of any species of elephant, hippopotamus, narwhal, walrus, or whale;
2. all or a piece of a horn of any species of rhinoceros, including any horn derivative, such as powder; and
3. any product that contains, or is advertised as containing, ivory or rhinoceros horn.

EXEMPTIONS

In General

The bill exempts from the ban any of the following activities involving ivory, rhinoceros horn, or an associated product:

1. activities expressly allowed by federal law;
2. state and federal agents and employees enforcing state or federal laws or a mandatory duty required by federal law;
3. noncommercial ownership transfers to a legal beneficiary of an estate, trust, or other inheritance; and
4. actions by bona fide educational or scientific institutions or museums.

Under the bill, a bona fide educational or scientific institution or museum is one that can prove through documentation that it (1) has an educational or scientific tax exemption from the IRS or the institution's national or state tax authority or (2) is accredited by a qualified national or state authority for the institution's location.

Musical Instruments and Antiques

The ban also does not apply to ivory that is part of (1) a musical instrument made before February 26, 1976 or (2) certain antiques. For antiques, the exemption only applies if a manufactured item is not made wholly or primarily of ivory, and the ivory:

1. if elephant ivory, was removed from the wild before February 26, 1976;
2. is a fixed component of a larger manufactured item and not, in its current form, the primary source of the item's total value (the greater of the fair market value or the actual price paid for ivory or rhinoceros horn);
3. comprises less than 20% of the item;
4. is not raw, unaltered, or minimally changed by carving.

The owner or seller of the antique item must also provide historical documentation or an expert's sworn affidavit that verifies the item is at least 100 years old.

PENALTIES FOR VIOLATIONS

The bill makes violating the ban, or any rule, regulation, or order adopted under it a class B misdemeanor. A first-time violator faces a maximum prison term of six months and a fine of at least \$3,000 or twice the total value of the ivory, horn, or product, whichever is greater.

Second or subsequent violations are punishable by up to one year in prison and a fine of at least \$6,000 or three times the total value of the ivory, horn, or product, whichever is greater.

BACKGROUND

Related International and Federal Law

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is an international treaty in which governments agree to restrict international trade in certain plants and animals, including elephants and rhinoceri, and products derived from

them. It regulates the international movement of both African and Asian elephants, including their ivory and ivory products.

CITES provides a framework for countries to follow when adopting legislation to implement it. Trade in protected species must be licensed, with different levels of protection based on a species' endangered status. Currently, 183 countries, including the United States, are parties to the treaty.

The United States regulates trade in elephant ivory and rhinoceros horn through CITES and laws such as the Endangered Species Act (15 U.S.C. § 1531 et seq.). Trade of these species requires permits, at minimum. The regulations include special rules for African elephants (50 CFR § 17.40 (e)).

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute

Yea 17 Nay 13 (03/10/2017)